S.B. CIVIL WRIT PETITION NO.2002/2003
Asu Ram
vs
The State of Rajasthan & Ors.

DATE OF ORDER:12.5.2006.

HON'BLE MR.R.C. GANDHI, J.

Mr.Kuldeep Mathur, for the petitioner.
Mrs. Vidhyawat Bora, Dy.GA, for the respondents.

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(ORAL)

The petitioner by means of this writ petition seeks a direction to the respondents to make payment of financial benefits attached to the post of Helper, to the petitioner, w.e.f. 4.10.96, i.e., the date his juniors were granted promotion to the post of Helper.

It is averred in the petition that the petitioner was promoted to the post of Helper vide order dated 20.2.2002 passed by the respondents and has been discharging the duties. In the year 1993, the respondent No.4 has forwarded the seniority list of Chowkidars working in the office of the respondent No.3. Due to some clerical error/mistake at the level of respondent No.4, the name of the petitioner was not included in the seniority list. On coming to the knowledge of the petitioner, he made a written request to the respondent No.4 to include his name in the seniority list. The respondent No.3 also vide letter dated 8.12.1993 requested respondent No.4 to include the name of the petitioner in the seniority list of Chowkidars. The respondent No.2 vide order dated

4.10.1996, promoted about 31 Chowkidars working in various Rural Water Projects to the post of Helper for the period of three months or till the regular candidates are made available by the Departmental Promotion Committee. The petitioner was eligible for promotion. He was not considered because his name was not included in the seniority list. By virtue of the order dated 4.10.1996, 13 persons junior to the petitioner were promoted to the post of Helper. The petitioner was deprived of his promotion without his fault. He made a representation to the respondents and considering his representation, the respondent No.2 vide order dated 20.12.2002 included the name of the petitioner in the seniority list of Chowkidars at S.No.58(B). The respondent No.2 vide order dated 20.2.2002 has also amended the promotion order dated 4.10.1996 and included the name of the petitioner at S.No.18(B) on the basis of his seniority, but at the same time, he ordered to give notional benefits of promotion. The petitioner aggrieved of his notional promotion and that he has not been granted the benefits as granted to his juniors, approached the Court.

The respondents have filed reply stating therein that the petitioner has been promoted to the post of Helper on 20.2.2002. The seniority lists were issued on 26.12.1993 and 4.10.1996. The petitioner did not make any grievance. Since the petitioner was not in the seniority list, therefore, the respondents have not committed any mistake and have made promotions according to the seniority list.

Heard learned counsel for the parties and perused the record.

Perusal of the pleadings shows that the respondents have not

denied that the petitioner's name was not included in the seniority list as being not forwarded by the respondent No.4 to respondent No.3. On making representation by the petitioner, his claim was considered and found correct. He was assigned seniority at S.No.18(B) of the seniority list. He was promoted, but the benefit of pay scale has not been granted to the petitioner. It is the duty of the respondents to maintain the seniority list of all the employees working in the cadre. If any mistake is committed, the respondents cannot blame the petitioner. The financial benefits, which the petitioner has been deprived should be granted by the respondents for the reason that his juniors have been granted the said benefit. Once the respondents have accepted the claim of the petitioner of his seniority, the fault is attributable to the respondents and in that event, the respondents are not justified in denying the financial benefits on promotion from interior date. Learned counsel for the petitioner has supported his plea relying upon the Division Bench judgment of this Court delivered in case Union of India & Ors Vs. Central Administrative Tribunal & Anr., Reported in 2004(4) WLC (Raj.) 445 wherein the Division Bench relieg upon the judgment of the Supreme Court delivered in the case of Union of India Vs. Janaki Das reported in 1991 (4) SCC 109 held as under: -

> "5. The learned counsel appearing for the petitioners pointed out that pursuant to the interim order dated 3.9.2003 passed by the Division Bench at the time of admission of the writ petition , notional promotion was granted to the second respondent on the post of Office

Superintendent (Gr.I) in the grade of Rs.6500-10500 with effect from 19.9.1996, the date from which his juniors were so promoted. Learned counsel for the petitioner submitted that since the petitioner did not work on the post of Superintendent Gr-I he was not entitled to the benefits of arrears of pay in respect of the higher post with effect from 19.9.1999 on the basis of the principles of 'No work' no pay'. The learned counsel, however conceded that the consequential benefits of the higher grade will be available to the second respondent for the purposes of pension etc. We have considered the submissions of the learned counsel for the petitioners. However, we regret our inability to accept the contention that the second respondent will not be entitled tot he grant of consequential benefits of arrears of pay in respect of the higher post with effect from 19.9.1996. The second respondent was denied promotion for no fault of his, rather he was deprived of the promotion in the year 1996 on account of the mistake of the petitioner s. It is well settled that no one can be allowed to suffer for the mistake of the other person. It is not in dispute that the second respondent was entitled to promotion with effect from 19.9.1996. The second respondent was willing to work against the higher post but was denied the opportunity to work by the petitioners. The petitioner s themselves having denied the opportunity cannot be heard to say that the second respondent should not be paid salary for the higher post with effect from 19.9.1996 as he did not perform duties of th higher post. In Union of India Vs.Janaki Das, 1991(4) SCC 109, the Supreme Court held that where a person is willing to work but was not given the opportunity to work for no fault of his, he would be entitled to payment of arrears of salary."

The judgment applies fully to the case of the petitioner. The respondents thus are held blame worthy for denying the petitioner the monitory benefits on promotion from the interior date as the petitioner is not at fault at all. The fault is attributable towards the respondents.

For the aforesaid reasons, the writ petition is allowed. The respondents are directed to give salary of the promotional post to the petitioner from the date his immediate junior has been granted such benefit.

(R.C. Gandhi), J.

c.p.goyal/-